STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD O. WATTS,	)	
	)	
Complainant,	)	Case No. LA-PN-74-H
	)	
v.	)	PERB Decision No. 458-H
	)	
CALIFORNIA STATE UNIVERSITY,	)	December 12, 1984
	)	
Respondent.	)	
	)	

Appearance: Howard O. Watts, on his own behalf.

Before Hesse, Chairperson; Jaeger and Morgenstern, Members.*

DECISION

This case is before the Public Employment Relations Board (Board) on an appeal by Howard O. Watts of the Board agent's dismissal, attached hereto, of his public notice complaint alleging that the California State University violated section 3595(a) and (b) of the Higher Education Employer-Employee Relations Act (Government Code section 3560 et seq.).

We have reviewed the Board agent's dismissal in light of the Complainant's appeal and the entire record in this matter and adopt that dismissal as the decision of the Board itself. The Board agent's denial of Watts' request for assistance made pursuant to California Administrative Code, title 8, section 32163 is affirmed for the reasons set forth in Los Angeles

*Members Tovar and Burt did not participate in this Decision.

Unified School District and California State University

(8/16/84) PERB Decision No. 396-H.

ORDER

The public notice complaint in Case No. LA-PN-74-H is DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127

August 10, 1984

Mr. Howard O. Watts

Re: NOTICE OF DISMISSAL - LA-PN-74-H
Watts v. California State University

Dear Mr. Watts:

Your above referenced public notice complaint was filed with our office on March 26, 1984. The complaint alleges the following violations of HEERA section 3595(a) and (b):

1. The Board of Trustees of the California State University (CSU), did not hold a meeting on February 22, 1984 for the presentation of union's proposals. (The Committee on Collective Bargaining conducted this meeting.)

2. The Board of Trustees of CSU did not hold a meeting on March 1, 1984 for public response to the unions' proposals. (The Committee on Collective Bargaining conducted this meeting.)

3. The Board of Trustees of CSU did not hold a meeting on March 15, 1984 for the presentation of its own proposals. (The Committee on Collective Bargaining conducted this meeting.)

4. The Board of Trustees of CSU had failed to implement the statutory intent of HEERA by delegating to the Committee on Collective Bargaining the presentation of collective bargaining proposals rather than assuming the responsibility itself.

5. Unions are permitted to submit written proposals to the Committee on Collective Bargaining without any oral presentation or explanation to the public.

6. The Board of Trustees of CSU denied your request that the exclusive representative of Unit 8 employees present its proposals before the full Board at a public meeting.

7. The Regional Director of the local PERB office was interfering with your right to assistance by limiting your visits to the regional office.

8. The Board of Trustees of CSU had not held a public meeting to delegate authority to the Committee on Collective Bargaining.

9. The Board of Trustees of CSU has been in violation of Government Code Section 11122 by granting authority to the Committee on Collective Bargaining rather than making decisions as a state body.

10. The Board of Trustees of CSU violated the law by not conducting the public notice meetings and negotiations itself, as the Board is "the employer" not the Committee on Collective Bargaining nor staff from the Employee-Relations Department.

After reviewing your allegations and discussing them with you, my analysis is as follows. In this complaint you attack the Board of Trustees of CSUS as the employer for not conducting the meeting and conferring with employee organizations. That is the basis for your allegations 1, 2, 3, 4, 6, 8, 9 and 10.

Section 3562(h) of HEERA defines the term employer as follows:

> "Employer" or "higher education employer" means the regents in the case of University of California, the Directors in the case of Hastings College of the Law, and the trustees in the case of the California State University, <u>including any person acting as an agent of an employer</u>. (emphasis added)

Section 3652 (n) of HEERA defines a person as:

> "Person" means <u>one or more individuals</u>, organizations, associations, corporations, boards, <u>committees</u>, commissions, agencies, or their representatives. (emphasis added)

Section 89035 of the Education Code provides:

> Wherever in this code a power is vested in the Trustees, the Trustees by majority vote may adopt a rule delegating such power to <u>any officer employee or committee</u> as the Trustees may delegate. (emphasis added)

In conjunction with the adoption of HEERA, the CSU Trustees established a Committee on Collective Bargaining. The statutory authority outlined above clearly permits CSU to delegate to its Committee on Collective Bargaining or to any "person," authority to

act in the realm of meeting and conferring including "sunshining" of collective bargaining proposals. You have presented no facts that would support the complaint. Your legal argument does not stand firm in the face of the clear and concise definitions of HEERA and the Education Code. Based on the foregoing, your allegations 1, 2, 3, 4, 6, 8, 9 & 10 are hereby dismissed.

As to allegation #5, nothing in the relevant section of the statute requires an employer or employee organization to present bargaining proposal in person in order to constitute a presentation, HEERA Section 3595(a) provides:

> All initial proposals of exclusive representatives and of higher education employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the higher education employer and thereafter shall be public records.

CSU procedure for public notice of initial bargaining proposals is included in Title 5, Article 16.1, Section 43725(b). It states:

> At the first meeting called for a particular representation unit, the exclusive representative shall present its proposal in writing and shall have ten (10) copies of such proposal for members of the Board of Trustees or its designated committee present, twenty (20) additional copies for distribution to the main library at each campus and in the Office of the Chancellor, and a sufficient quantity, but not fewer than twenty (20), for interested members of the public in attendance at the public meeting. At the time of such presentation, a representative of the exclusive representative may address the Board of Trustees of its designated committee for the purpose of clarifying or amplifying upon any portion of its proposal. Thereafter, the Board of Trustees or its designated committee shall set a time for a second public hearing.

Neither the law nor the CSU procedures require that the exclusive representative appear in person before the Trustees or its designated agent when offering their proposals. This allegation is hereby dismissed.

Allegation #7 appears to be added as spice to your complaint. Clearly CSUS cannot be held responsible for PERB's internal policies regarding assistance in processing your complaints. This allegation is also hereby dismissed.

Finally as to your reliance on Government Code section 11122 to support your complaint, PERB does not adjudicate violations of the "Open Meeting Act," thus it is not a matter for PERB to decide.

Your request for assistance in this case has been reviewed and is hereby denied. Due to the fact that technical assistance as prescribed by the PERB in Watts v. Los Angeles Community College District, Decision No. 186 (December 15, 1981), and Watts v. Los Angeles Unified School District and California School Employees Association, Decision No. 181a, (February 22, 1982), could not cure the defects in this complaint, your request is inappropriate. I will remain available to assist you in the technical processing of your complaints as PERB has described in the above-referenced cases.

Therefore, because none of your allegations state a prima facie violation of HEERA section 3595, nor can they be amended to do so, your complaint is hereby DISMISSED WITHOUT LEAVE TO AMEND.

An appeal of this decision pursuant to PERB Regulation 32925 may be made within 20 calendar days following the date of service of this decision by filing an original and 5 copies of a statement of the facts upon which the appeal is based with the Board itself at 1031 - 18th Street, Suite 200, Sacramento, California 95814. Copies of any appeal must be concurrently served upon all parties and the Los Angeles Regional Office. Proof of service pursuant to Regulation 32140 is required.

Sincerely,

Frances A. Kreiling
Regional Director

Roger Smith
Regional Representative

RS:bw

cc: William B. Haughton, Esq.